IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/04/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S. SARDAR ZACKRIA HUSSAIN

Civil Misc. Appeal No. 1054 of 1994

The Kumbakonam Milk Supply
Cooperative Society,
represented by its Secretary.

(Cause Title amended-vide Order
dated 1-7-98 in CMP No.19165/97). .. Petitioner/Appellant.

-Vs-

The Regional Director,
Employees' State Insurance
Corporation, Madras-34. .. Respondent/Respondent.

Appeal against the Order and Decree dated 28-2-94, made in E.S.I.O.P.No.33/87
on the file of the District Judge, Thanjavur.

!For appellant in both CMAS. : Mr. T. Susindran

^For Respondent : Mr. G. Desappan

:JUDGMENT

(Judgment of the Court was delivered by P. Sathasivam,J)

Kumbakonam Milk Supply Cooperative Society through its Secretary, aggrieved by the order dated 28-02-1994, made in E.S.I.O.P.No. 33/87 on the file of the District Judge, Thanjavur, has filed the above appeal under Section 82 (2) of The Employees' State Insurance Act, 1948.

2. According to the appellant, it is a society registered under the Co-operative Societies Act and their main object is to purchase milk from its members and to sell the same. The said work was being done for the last 45 years. While so, on 14-5-85, a memo was issued claiming Rs.87,101/- towards E.S.I. contribution for the period between 1-4-79 and 31-12-84. Again, on 26-5-86 it received another notice demanding Rs.1,11,488.40 towards E.S.I. contribution. It is further stated that on receipt of the said notices, the appellant sent a reply stating that it is a society and not an industry, that no manufacturing process is being carried out and that the persons working in the society are not employees within the meaning of Section 2 (9) of the Employees' State Insurance Act, 1948 (hereinafter referred to as "the Act"). It is further stated that since their explanation was not satisfactory, the society filed E.S.I.O.P.No.33/87 before the District Court under Section 75 (1) of the Act. Before the District Court, the Accountant of the Society was examined as P.W.1 and Exs. P-1 to P-11 were marked in support of their claim. On the side of the Employees' State Insurance Corporation, their Inspectors were examined as R.W.1 and R.W.2 and Exs. R-1 to R-4 marked in support of their defence. The learned District Judge, after framing necessary issues and after considering the evidence, both oral and documentary, and after holding that the appellant society is an organisation under the Act, and hence it is liable to pay its contribution, dismissed the O.P., filed by the society. The

District Court also permitted the society to approach the Corporation for modification of the quantum, if there is any variation in the contribution. Questioning the said award, the society has preferred the above appeal.

3. Heard Mr. T. Susindran, learned counsel for the appellant and Mr. G. Desappan for respondent.

4. Though no substantial question of law was framed by this Court at the time of admission, the appellant society has raised the following substantial questions of law in the Memorandum of Grounds of Appeal:

a) Whether the appellant-Society can be attracted by the provisions of the State Employees' Insurance Act, 1948, in view of the fact that the Appellant-Society's duty is only to preserve the milk purchased from the purchasers for the purpose of distributing the same to its customers and as such no question of manufacturing process arises, as contemplated under the provisions of the said Act?

b) Whether in the absence of any transformation of a new product from the milk preserved by the Appellant-Society, can the Appellant-Society be termed as 'factory' in which manufacturing process is undertaken so as to attract the provisions of the State Employees' State Insurance Act, 1948.

5. First we shall refer the relevant provisions of the Employees' State Insurance Act and the Factories Act which are required for the disposal of this appeal. Section 2(9) of the Employees' State Insurance Act, 1948 reads thus:

"Section 2(9) "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and-..."

Section 2 (12) "factory" means any premises including the precincts thereof-
(a) whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

(b) whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on,

but does not include a mine subject top the operation of the Mines Act, 1952 or a railway running shed;"

Section 2 (14AA) "manufacturing process" shall have the meaning assigned to it in the Factories Act, 1948;

Section 2 (k) of The Factories Act, 1948 reads thus:
"Section 2 (k)"manufacturing process" means any process for-
(i) xx xx
(ii) xx xx
(vi) preserving or storing any article in cold storage; (inserted by Act 94 of 1976).

6. Even according to the appellant-Society, though they employed 24 persons, except two who are working in cold storage, the others, namely, 20 persons are mainly working outside the premises. According to the Society, their main job is to procure milk from the members. The documents-Exs. P-1 to P-7 produced by the Society would go to show that the appellant society is a factory within

the definition of Section 2 (12) of the Employees' State Insurance Act. As per Section 2 (14AA) of the Act, 'manufacturing process' shall have the meaning assigned to it in the Factories Act, 1948. Section 2 (k) of the Factories Act, 1948 defines the expression "manufacturing process" and we have already referred to the insertion of Clause (vi)of Section 2 (k) by Act 94 of 1976 which makes it clear that preserving or storing any article in cold storage is deemed to be a manufacturing process. Though it is stated that only two persons are being engaged in cold storage and others are messengers and their main work is to procure milk from its members, in the light of the definition of the words "employee", "factory", and "manufacturing process", as referred to in the Employees State Insurance Act, and the Factories Act and in the light of the details furnished in the documents produced by the society, we hold that the appellant society is an establishment which comes within the ambit of Employees' State Insurance Act and that the learned District Judge was perfectly right in arriving at a conclusion, confirming the action initiated by the Employees' State Insurance Corporation.

7, Learned counsel for the appellant very much relied on a decision of Maharajan, J., in Madurai Co-op. Milk Supply Union v. R.S.I. Corporation, reported in Volume 39 F.J.R. 452; and another decision of Govardhan, J. in C.M.A.No. 766 of 1986 dated 21-11-1994. Since the cases dealt with in those decisions were decided prior to insertion of sub-Clause (vi) of Clause (k) of Section 2 of the Factories Act, we are of the view that both the decisions are not applicable to the facts of the present case.

8. Learned counsel for the appellant would contend that as most of the employees had gone away and are not available as on date, the direction of the Employees' State Insurance Corporation to deposit the contribution inclusive of the unavailable employees cannot be sustained. In this regard, it is relevant to refer a Division Bench decision of this Court in Madras Govt. Servants Co-op. Society Ltd., v. Employees' State Insurance Corpn., reported in 1996 II M.L.J. 4 47, wherein this Court, while considering certain provisions of the Employees' State Insurance Act, 1948, has held that if there is systematic economic or commercial activity, it will be shop within the meaning of Section 1 (9) of the Act.

9. In E.K. Haj Mohammadmeera Sahib and Sons v. The Regional Director, Employees State Insurance Corporation (D.D), reported in 2003-1-L.W.669, a Division Bench of this Court has held that even in a case where the person, to whom wages was paid and on which the contribution is sought, is not in a position to avail the benefits provided under the Act, nevertheless the employer is not relieved from the obligation to pay the contribution. The Division Bench further held that the benefit of the contribution would become part of a fund available for use for the benefit of workmen who are eligible to claim the benefit under the Act.

10. In Employees State Insurance Corporation v. Hotel Kalpaka

International,reported in AIR 1993 Supreme Court 1530, Their Lordships have held that: (para 27)

"27. It is equally fallacious to conclude that because the employees had gone away there is no liability to contribute. It has to be carefully remembered that the liability to contribute arose from the date of commencement of the establishment and is a continuing liability till the closure. The very object of establishing a common fund under Section 26 for the benefit of all the employees will again be thwarted if such a construction is put."

Both the decisions referred to above make it clear that even if the employees had gone away, the liability to contribute arises from the date of commencement of the establishment and it is a continuing liability till it is closed. Accordingly, we reject the contrary argument of the learned counsel for the appellant.

11. The Employees' State Insurance Act is a piece of social welfare legislation enacted primarily with the object of providing certain benefits to employees in case of sickness, maternity and employment injury and also to make provisions for certain other matters incidental thereto. In an enactment of this nature, the endeavour of the Court should be to interpret the provisions liberally in favour of the persons for whose benefit the enactment has been made. In the light of the statutory provisions of the Employees' State Insurance Act, 1948 and the Factories Act, 1948, coupled with the factual details available in the case on hand, we do not want to take a different view than that taken by the District Judge, and hence we are in agreement with the conclusion arrived at by the learned District Judge. There is no merit in the appeal. Accordingly, both the substantial questions of law referred to above are answered in the negative. Consequently, the appeal is dismissed. No costs.

(P.S.J.,) (Z.H.J.,)

R.B.
Index:- Yes
Internet:- Yes
To:-
1) The District Judge, Thanjavur.
2) The Section Officer, High Court, Madras.

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